

Memorandum



Date: July 24, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: Gerardo M. Burgess
County Manager

Agenda Item No. 14(A)(17)

Subject: First Amendments to Development Leases between Miami-Dade County and MEA and AA Acquisitions, LLC.

Recommendation

It is recommended that the Board approve the attached First Amendments to the Development Lease Agreements between Miami-Dade County and Miami Executive Aviation (MEA) and AA Acquisitions LLC (AA) for premises at Opa-locka Executive Airport (OPF) to increase the MEA leasehold by an additional 5,600 square feet of land, more or less, needed for MEA's proposed storage hangar facility development, and decrease the AA leasehold by the same 5,600 square feet of land.

The MEA First Amendment also deletes Section 1.08 relating to elimination of a take-back clause that is no longer necessary. AA's First Amendment amends Article 9.04(A) so as to clarify that AA has the right to enter into both construction and permanent financings for AA's projects. The Resolution also approves AA's acquisition of the former Fightertown lease at OPF (which had been assigned to FS Aviation, LLC with approval of the County (for ease of reference, the "Fightertown" lease), and approves an amendment of the assumed Fightertown lease so as to permit AA as the new owner of the Fightertown lease to operate a Fixed Base Operation (FBO) on the Fightertown lease site.

Scope

OPF is located within District 1.

Fiscal Impact/Funding Source

The primary transactions effectively result in the transfer of premises from one tenant to another, and greater revenues will accrue to the County by reason of AA being able to operate an FBO facility within the Fightertown leasehold.

Track Record/Monitor

MEA has a good record of rental payments and ranks among one of the early success stories at OPF. MEA has an outstanding payment to the County of \$345,000 as a result of a recent directive of the Federal Aviation Administration (FAA) that MEA pay such amount in consideration of MEA's use of the aircraft ramp area that had been constructed with federal funds. MEA agrees that, as of July 13, 2007, MEA shall have paid MDAD the sum of fifty thousand dollars (\$50,000.00), with a second payment of two hundred ninety five thousand dollars (\$295,000.00) to be paid in one lump sum by no later than the earlier of September 15, 2008, or the Date of Beneficial Occupancy of MEA's proposed storage hangar. If MEA fails to pay MDAD the \$345,000 by the deadline, or fails to pay whatever amount is directed

by the FAA to be paid, such failure shall be a material breach of MEA's lease and the County shall be entitled to exercise all rights provided by law for such breach.

Background

On May 17, 2005, the Board adopted Resolution No. R-597-05 that approved a Development Lease Agreement with MEA for a total of 20.97 acres at OPF. That development agreement added MEA's existing 16.63 acres to a new and adjacent 4.34-acre site to enable MEA to construct a 40,000-square-foot hangar storage and/or aircraft maintenance facility next to MEA's primary facility on the original 16.63-acre MEA site.

On March 8, 2007, the Board adopted Resolution No. R-310-07 approving the Amended and Restated Development Lease Agreement with AA. AA is the successor tenant to Opa-locka Aviation Group (OAG) and the MEA property immediately abuts the MEA lease site.

On June 5, 1997, the Board adopted Resolution No. R-655-97 approving a Development Lease Agreement with Fightertown for Fightertown to construct a storage and maintenance hangar on the site. Fightertown's leasehold site is within the footprint of the AA site, but is not part of the AA lease. Recently, AA acquired the Fightertown entity and its interest in the leased area.

MEA, AA, and the Miami-Dade Aviation Department (MDAD) have been working to bring about the significant development that will be occurring on MEA's and AA's leasehold sites. Several inter-related matters have recently occurred that call for the amendment of the MEA, AA and the Fightertown leases.

First, MEA submitted its development plans for the new hangar and the plans were approved by MDAD. MEA's development lease had a leasehold exhibit attached to it and the lease required MEA to complete a survey based on the legal description supplied by MDAD. MEA, however, worked from the lease exhibit and sunk pilings in the ground for its new facility before a survey was completed. The pilings are partially on the AA site. In an effort to help MEA maintain its already-installed pilings, MDAD met with AA to discuss the possibility of reducing the AA leasehold by approximately 5,600 square feet to allow MEA to avoid the significant costs of removing and re-inserting the piles. AA agreed to the MEA request and to a reduction of its premises by the 5,600 square feet, as reflected in AA's consent letter attached to this memorandum.

Secondly, MEA has been in the process of trying to obtain construction and permanent loan financing for its project and has advised MDAD that such financing is not available due to the presence in the lease of Section 1.08 (entitled "Early Termination for Airport Purposes"). Section 1.08 was added to the MEA amended lease as a protective measure for the County in the event of litigation against the County by OAG. Under the OAG lease, the County had the right to take back any portion of the OAG premises not then being developed. The County notified OAG of the County's intent to take back the 4.34 acres MEA needed for its development project. OAG had threatened the County with a lawsuit based over various County actions, including the County's take-back of the 4.34 acres. The County was satisfied it had the right to take back the property, but to protect the County in the event OAG prevailed, Section 1.08 was inserted when the MEA lease was amended to enable the County to take back from MEA the 4.34 acres. OAG did not file a lawsuit and later sold its interests in the lease to AA, including all claims thereunder. As part of the transaction

approving AA's assumption of the OAG lease, AA released the County from all AA claims, including any claims relating to the County's take-back of OAG property, thereby removing any further need for Section 1.08. By removing the potential of a take-back of the 4.34 acres as currently presented by Section 1.08, financing institutions will be willing to provide loan funds to MEA for construction of its hangar facility on the 4.34 acres.

Thirdly, the AA Lease provides for construction loan financings for AA's and sublessees' projects on the AA premises. AA has requested an amendment to Article 9.04(A) so as to clarify that both construction and permanent financings are permissible.

Except for (a) the swap of the 5,600 square feet between the MEA and AA leases, (b) and the deletion of Section 1.08 from the MEA lease, and (c) the amendment of Article 9.04(A) of the AA Lease, the lease terms of both MEA and AA leases remain unchanged.

Fourthly, AA has also acquired the interests of Fightertown to its "hole-in-the-doughnut" lease that sits in the middle of AA's leasehold site. AA and MDAD intend to negotiate in the future over the terms applicable to incorporating the 1997 Fightertown lease into AA's 2007 lease terms, but for now, MDAD recommends that the Board approve AA's acquisition of all interests under the Fightertown lease and to amend the Fightertown lease so as to permit AA to operate an FBO within the Fightertown leasehold site. AA's larger site acquired from OAG permits FBO operations, but the Fightertown lease does not. To make all of AA's operational interests the same, the Fightertown lease therefore needs to be amended to permit FBO operations on the Fightertown site.



Assistant County Manager

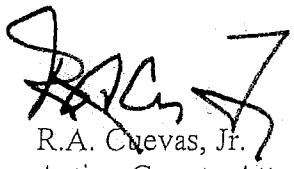


MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: July 24, 2007

FROM: 
R.A. Cuevas, Jr.
Acting County Attorney

SUBJECT: Agenda Item No. 14(A)(17)

Please note any items checked.



“4-Day Rule” (“3-Day Rule” for committees) applicable if raised

6 weeks required between first reading and public hearing

4 weeks notification to municipal officials required prior to public hearing

Decreases revenues or increases expenditures without balancing budget

Budget required

Statement of fiscal impact required

Bid waiver requiring County Manager’s written recommendation

Ordinance creating a new board requires detailed County Manager’s report for public hearing

Housekeeping item (no policy decision required)

No committee review

Approved _____ Mayor

Agenda Item No. 14(A) (17)

Veto _____

07-24-07

Override _____

RESOLUTION NO. _____

RESOLUTION RELATING TO OPA-LOCKA EXECUTIVE AIRPORT (OPF); APPROVING FIRST AMENDMENT TO THE DEVELOPMENT LEASE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND MIAMI EXECUTIVE AVIATION (MEA) SO AS TO REMOVE SECTION 1.08 THEREFROM IN ITS ENTIRETY AND TO INCREASE THE MEA PREMISES BY 5,600 SQUARE FEET, MORE OR LESS, SO AS TO PERMIT MEA TO COMPLETE ITS PROPOSED CONSTRUCTION OF A STORAGE AND AIRCRAFT MAINTENANCE HANGAR; APPROVING FIRST AMENDMENT TO THE DEVELOPMENT LEASE AGREEMENT BETWEEN THE COUNTY AND AA ACQUISITIONS LLC (AA) SO AS TO REMOVE THEREFROM THE SAME 5,600 SQUARE FEET FROM THE AA LEASEHOLD PREMISES AND AMENDING ARTICLE 9.04(A) TO PROVIDE FOR BOTH CONSTRUCTION AND PERMANENT FINANCING OF ITS PROJECTS ON THE PREMISES; APPROVING AA'S ACQUISITION OF THE LEASEHOLD INTERESTS OF FIGHTERTOWN, INC., AT OPF AND APPROVING THE AMENDMENT OF SUCH LEASE BY PERMITTING FIXED BASE OPERATIONS ON THE LEASEHOLD SITE TO BE CONDUCTED BY AA AS SUCCESSOR TO FIGHTERTOWN; AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE SUCH FIRST AMENDMENTS AND ALL DOCUMENTS NECESSARY OR REASONABLY REQUIRED TO PLACE THE FOREGOING INTO EFFECT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board (1) approves the First Amendment to the Development Lease Agreement between the County and Miami Executive Aviation (MEA) so as to (a) remove Section 1.08 therefrom in its entirety and (b)

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increase the MEA leasehold premises by approximately 5,600 square feet, more or less, as reflected on the attached memorandum from the County Manager; (2) approves the First Amendment to the Development Lease Agreement between the County and AA Acquisitions LLC (AA) so as to (a) decrease AA's leasehold premises by the same 5,600 square feet, and (b) amend Article 9.04(A) so as to permit both construction and permanent financing of AA's and its sublessees' projects on the AA premises; (3) approves the acquisition by AA of the entity known as Fightertown, Inc., which includes all leasehold interests of Fightertown to leased premises at OPF, and approves the amendment of such lease so as to permit AA, as successor to Fightertown, Inc., to operate a Fixed Base Operation on the Fightertown leasehold site; (4) authorizes the Mayor or designee to execute the First Amendments to the MEA and AA leases and to adjust the square footage to be exchanged between them by the precise amount shown to be necessary for MEA to construct its proposed storage and maintenance hangar, upon review by the County Attorney; authorizes the Mayor or designee to execute an amendment of the Fightertown lease, upon review by the County Attorney, so as to permit FBO operations on the Fightertown leasehold site; and (5) authorizes the Mayor or designee to execute all other documents necessary or reasonably required, upon review by the County Attorney, to place the foregoing into effect.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this
24th day of July, 2007. This resolution shall become effective ten (10) days after the date
of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon
an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

TPA

Thomas P. Abbott

**FIRST AMENDMENT
TO
AMENDED AND RESTATED DEVELOPMENT LEASE AGREEMENT
BETWEEN
MIAMI-DADE COUNTY, FLORIDA
AND
AA ACQUISITIONS, LLC**

This First Amendment ("First Amendment") to the Amended and Restated Development Lease Agreement ("Agreement") between Miami-Dade County, Florida ("County") and AA Acquisitions, LLC ("AA") is entered into as of this ____ day of _____, 2007, by and between the County and AA,

Whereas, by Resolution No. R-310-07, the Board of County Commissioners of the County approved the Agreement for AA's use, occupancy, and development of a certain portion of Opa-locka Executive Airport ("OPF"); and

Whereas, another tenant by the name of Miami Executive Airport ("MEA") leases certain property at OPF that abuts a portion of AA's premises, and plans to construct a storage and maintenance hangar on the MEA premises; and

Whereas, MEA mistakenly placed pilings for the proposed hangar partially on AA's leased premises and the County through its Aviation Department ("MDAD") and MEA have asked AA to relinquish approximately 5,600 square feet (more or less) of AA property so that MEA's hangar project and its pilings may be located on MEA's leased premises; and

Whereas, AA has agreed to relinquish such property to the County, so that the County in turn can amend the MEA lease so as to include the approximately 5,600 square feet of land onto MEA's leased premises;



NOW THEREFORE, in consideration of the foregoing premises and of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Reduction of AA's Leasehold Premises. AA hereby consents to the reduction of its leasehold Premises under the AA Agreement by an amount that is no greater than approximately 5,600 square feet of property (more or less), with the easternmost portion of the property being relinquished by AA to be at or immediately adjacent to the easternmost portion of the storage and maintenance hangar to be constructed by MEA, such hangar on its easternmost portion to be located on the approximately 5,600 square feet and not to extend any more easterly than the easternmost boundary of the approximately 5,600 square foot portion of land, which point is to be immediately west of the westernmost boundary of Parcel 7 as shown on the Survey prepared by Gary B. Castell Surveying, Inc. dated June 14, 2007, (the "Survey").

2. Legal Description/Legal Survey. MEA shall be responsible for preparing a legal description and a survey at its expense showing the precise description and location of the approximately 5,600 square foot parcel of land (the "Required Survey"). AA and MDAD shall each have the right to review and approve such legal description and the Required Survey as a condition to the effectuation of this First Amendment.

3. Effective Date of Reduction. Subject to the approval of the Required Survey by AA and MDAD, as of 12:01 AM on the date first above given, such portion of land in the approximate amount of 5,600 square feet as reflected by the approved Required Survey shall be removed from the AA lease and AA shall thereafter have no further responsibility or obligation in regard to such parcel.

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4. **No Compensation for Reduction.** AA shall not be entitled to any compensation for the reduction of the AA Premises by such approximately 5,600 square foot parcel.

5. **County to Add Parcel to MEA's Lease.** Effective as of 12:01 AM on the date first above given, the County shall cause such approximately 5,600 square feet as described in the Required Survey, to be added to the MEA leasehold premises, and MEA shall assume all responsibility and obligation for such parcel as of such time and date and for the duration of the MEA lease. Upon the expiration or early termination of the MEA lease, the MEA leasehold site, including the approximately 5,600 square foot parcel, shall revert to the County.

6. **Return of Parcel to AA if Parcel not Added to MEA Lease.** In the event that all or any part of the approximately 5,600 square foot parcel is not added to MEA's lease agreement, such parcel shall be restored to AA's Agreement and remain a part of AA's leasehold premises for the duration of the AA Agreement.

7. **Amendment to Subsection 9.04 (A) of the Agreement.** The first sentence of Subsection 9.04(A) of the Agreement is stricken in its entirety and replaced with the following: "Lessee or any Sub-Lessee shall have the right to secure one or more financings (tax-exempt and/or conventional) in connection with the construction of Improvements and/or the permanent financing thereof." The remainder of Subsection 9.04(A) shall remain in effect and unmodified.

8. **No Other Effect on AA Agreement.** Except for the foregoing reduction of AA's premises by the removal therefrom of the approximately 5,600 square foot parcel, and the amendment to the first sentence of Section 9.04(A) as set forth in paragraph 7

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above, the remainder of the AA Agreement shall remain in full force and effect and unmodified.

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EXECUTION PAGES FOLLOW THIS PAGE

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to their Amended and Restated Development Lease Agreement to be executed by their appropriate officials and representatives, as of the date first above written.

BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA

By: _____
County Manager

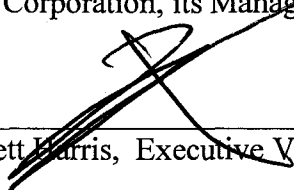
ATTEST: Harvey Ruvin,
Clerk

By: _____
Deputy Clerk

AA ACQUISITIONS, LLC, a Florida Limited
Liability Company

By: Adler KOPF Manager, LLC, a Florida Limited
Liability Company, its Manager,

By: Adler KOPF Manager, Inc., a Florida
Corporation, its Manager

By:  _____
Brett Harris, Executive Vice President

**FIRST AMENDMENT
TO
DEVELOPMENT LEASE AGREEMENT
BETWEEN
MIAMI-DADE COUNTY, FLORIDA
AND
MIAMI EXECUTIVE AVIATION**

This First Amendment ("First Amendment") to the Development Lease Agreement between Miami-Dade County, Florida ("County") and Miami Executive Aviation ("MEA") is entered into as of this _____ day of _____, 2007, by and between the County and MEA,

Whereas, by Resolution No. R-597-05, the Board of County Commissioners of the County approved Development Lease Agreement (#002454) (hereinafter the "Lease" or the "Agreement") for MEA's use, occupancy, and development of a certain portion of Opa-locka Executive Airport ("OPF") and the Lease included a sketch but not a legal description of MEA's leasehold premises; and

Whereas, the Lease contained Article 1.08 which would have enabled the County to take back the MEA leasehold property in the event such take back was necessary as a result of the claims made by Opa-locka Aviation Group, LLC ("OAG"), a former tenant at OPF whose leasehold premises was adjacent in part to MEA's property; and

Whereas, by Resolution No. R-310-07, the Board of County Commissioners of the County approved an Amended and Restated Development Lease Agreement for AA Acquisitions, LLC, the successor to OAG, for AA's use, occupancy, and development of a certain portion of Opa-locka Executive Airport ("OPF"); and as a condition of such lease, AA is obligated to release the claims of OAG against the County, including any

claims related to the County's take-back from OAG of a certain portion of the current MEA leasehold premises; and

Whereas, MEA's current leasehold premises abut a portion of AA's premises, and MEA plans to construct a storage and maintenance hangar on the MEA premises; and

Whereas, after MEA mistakenly placed pilings for the proposed hangar partially on AA's lease premises, reportedly as a result of MEA's leasehold premises not having a recordable legal description, the County through its Aviation Department ("MDAD") and MEA asked AA to relinquish approximately 5,600 square feet of AA property, more or less, so that MEA's hangar project and its pilings may be located on MEA's leased premises, and AA has agreed to relinquish such parcel to the County so that the County in turn may add it to the MEA lease; and

NOW THEREFORE, in consideration of the foregoing premises and of the mutual covenants and agreements herein contained, the parties agree as follows:

1. **Addition of Parcel to MEA's Leasehold Premises.** The MEA leasehold premises under the MEA Agreement shall be increased by the 5,600 square foot parcel, more or less, that is removed from the AA leasehold premises. The parties acknowledge that the size of such parcel is estimated to be approximately 5,600 square feet, but the final square footage amount of such parcel will be based on the square footage of the parcel whose dimensions and location are described in Exhibit A hereto. The parcel shall be no greater than the square footage of the Exhibit A parcel, with the easternmost portion of the property being relinquished by AA to be at or immediately adjacent to the easternmost portion of the storage and maintenance hangar to be constructed by MEA, such hangar on its easternmost portion to be located on the Exhibit A site and not to

extend any more easterly than the easternmost boundary of the parcel of land described in Exhibit A..

2. Legal Description/Legal Survey. MEA shall be responsible for preparing a legal description and legal survey at its expense showing the precise description and location of the parcel of land described in Exhibit A. AA and MDAD shall have the right to review and approve such legal description and survey. MEA's legal description and survey for the parcel of land described in Exhibit A, as well as MEA's legal description and survey for the entirety of the MEA leasehold premises, shall be reflected in a Memorandum of Lease to be executed by the County and MEA and recorded by MEA upon review and acceptance by AA and MDAD.

3. Effective Date of Reduction. Effective as of 12:01 AM on the date first above given, such portion of land as described in Exhibit A and as reflected by the approved legal description and survey shall be removed from the AA lease and AA shall thereafter have no further responsibility or obligation in regard to such parcel.

4. County to Add Parcel to MEA's Lease. Effective as of 12:01 AM on the date first above given, the County shall cause the parcel described in Exhibit A to be added to the MEA leasehold premises, and MEA shall assume all responsibility and obligation for such parcel as of such time and date and for the duration of the MEA lease, including the payment of rent to MDAD for such parcel.

5. Deletion of Article 1.8. Effective as of 12:01 on the date first above given, Article 1.08 is deleted in its entirety from the Agreement and shall be of no further force and effect.

6. No Other Effect on MEA Agreement. Except for the foregoing addition to MEA's Lease of the parcel described in Exhibit A which shall occur upon the effective date of such addition as provided above in Paragraph 4, and except for the deletion of Article 1.08 of the Lease, the remainder of the MEA Lease shall remain in full force and effect.

7. Payment of Amount Owing on Ramp Area. The parties acknowledge that the Federal Aviation Administration has required MEA to pay to MDAD an amount of money to reflect MEA's incorporation into the Lease of an aircraft ramp area that had been constructed with federal funding. The parties understand such amount will be approximately \$345,000, but the parties agree that MEA shall be required to pay MDAD whatever amount is required by the FAA to be paid. MEA agrees that, as of July 13, 2007, MEA shall have paid MDAD the sum of fifty thousand dollars (\$50,000.00), with a second payment of two hundred ninety five thousand dollars (\$295,000.00) (or the balance of the amount determined by the FAA to be paid to MDAD if other than \$295,000) to be paid in one lump sum by no later than the earlier of September 15, 2008, or the Date of Beneficial Occupancy of MEA's proposed storage hangar. The County shall provide MEA with all relevant FAA and County documentation which supports the FAA grant reimbursement requirement. If MEA fails to pay MDAD the \$345,000 (or the total of whatever other amount may be determined by the FAA) by the earlier of September 8, 2008 or the Date of Beneficial Occupancy, such failure shall be a material breach of MEA's lease and County shall be entitled to exercise all rights provided by law for such breach.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to their Amended and Restated Development Lease Agreement to be executed by their appropriate officials and representatives, as of the date first above written.

BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA

By: _____
County Manager

ATTEST: Harvey Ruvin,
Clerk

By: _____
Deputy Clerk

MIAMI EXECUTIVE AVIATION

By: Guillermo L. Hies
President

Attest: Hugo L. Gomez
Corporate Secretary

Guillermo L. Hies
Printed name